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MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

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NOTICE

(Code Sections Affected)

The following sections were affected by the 48th Legislature in Special Session:

10-2-201 Through 10-2-206
10-2-402
39-30-101 Through 39-30-207
49-2-405
49-3-103

Those sections follow. We suggest you mark the affected sections in the appropriate volumes of the Code to remind yourself to consult this pamphlet when researching such sections.

TITLE 10

MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 2

VETERANS

Part 2

Reemployment on Completion of Service

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Veterans' preference in public employment, Title 39, ch. 30.

10-2-201 through 10-2-206. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

Compiler's Comments

Effective Date — Applicability — Retroactive Repealer of Former Veterans' and Disabled Civilians' Employment Preference Law: Section 16, Ch. 1, Sp. L. 1983, read: "(1) This act is effective on passage and approval. [Approved December 20, 1983.]

(2) Except as provided in section 14, this act applies only to positions that are filled after the effective date of this act."

Section 14, Ch. 1, Sp. L. 1983, read: "Sections 10-2-201 through 10-2-206, MCA, are repealed. This repeal applies retroactively to bar any claim of violation or application of 10-2-201 through 10-2-206 that has not been reduced to judgment, whether or not the judgment is final, on the effective date of this act [December 20, 1983]. Claims under 10-2-201 through 10-2-206 that have been reduced to judgment, whether or not the judgment is final, on the effective date of this act are enforceable. No claim for a violation of 10-2-201 through 10-2-206 may be made under section 8 of this act [39-30-206 and 39-30-207]."

Histories of Repealed Sections:

10-2-201. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(1).

10-2-202. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(2); amd. Sec. 1, Ch. 142, L. 1979; amd. Sec. 1, Ch. 5, L. 1981.

10-2-203. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(3).

10-2-204. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(4).

10-2-205. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(5).

10-2-206. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(6).

10-2-402. Superintendent to be given veterans' preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall apply the preference granted to veterans and disabled veterans, but not the preference granted to other persons, by Title 39, chapter 30.

History: En. Sec. 21, Ch. 199, L. 1965; R.C.M. 1947, 80-1802; amd. Sec. 1, Ch. 119, L. 1981; amd. Sec. 11, Ch. 1, Sp. L. 1983.

Compiler's Comments

1983 Special Session Amendment: Substituted "shall apply the preference granted . . . by Title 39, chapter 30" for "shall give preference to veterans as defined in 10-2-202".

1981 Amendment: Changed requirement that superintendent be a veteran to requirement that veteran's preference be given in selecting superintendent.

TITLE 39

LABOR

CHAPTER 30

VETERANS' AND HANDICAPPED PERSONS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

Section
39-30-101. Short title.
39-30-102. Purposes.
39-30-103. Definitions.
39-30-104 and 39-30-105 reserved.
39-30-106. Adoption of rules.
39-30-107. Certification of handicapped persons.
39-30-108. No application if conflict with federal law.

Part 2 — Operative Provisions

39-30-201. Employment preference in initial hiring.
39-30-202. Eligibility requirements.
39-30-203. Duration of preference.
39-30-204 and 39-30-205 reserved.
39-30-206. Notice and claim of preference.
39-30-207. Enforcement of preference.

Chapter Compiler's Comments

Effective Date — Applicability — Retroactive Repealer of Former Veterans' and Disabled Civilians' Employment Preference Law: Section 16, Ch. 1, Sp. L. 1983, read: "(1) This act is effective on passage and approval. [Approved December 20, 1983.]

(2) Except as provided in section 14, this act applies only to positions that are filled after the effective date of this act."

Section 14, Ch. 1, Sp. L. 1983, read: "Sections 10-2-201 through 10-2-206, MCA, are repealed. This repeal applies retroactively to bar any claim of violation or application of 10-2-201 through 10-2-206 that has not been reduced to judgment, whether or not the judgment is final, on the effective date of this act [December 20, 1983]. Claims under 10-2-201 through 10-2-206 that have been reduced to judgment, whether or not the judgment is final, on the effective date of this act are enforceable. No claim for a violation of 10-2-201 through 10-2-206 may be made under section 8 of this act [39-30-206 and 39-30-207]."

Part 1

General Provisions

39-30-101. Short title. This chapter may be cited as the "Montana Veterans' and Handicapped Persons' Employment Preference Act".

History: En. Sec. 1, Ch. 1, Sp. L. 1983.

39-30-102. Purposes. The purposes of this chapter are to recognize veterans and disabled veterans for service to their country, recognize past

employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of veterans, disabled veterans, and handicapped persons.

History: En. Sec. 2, Ch. 1, Sp. L. 1983.

39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty other than for training in the regular components of the United States army, air force, navy, marine corps, or coast guard with full pay and allowances. The term does not include monthly drills, summer encampments, initial training, or other inactive or active duty for training in the national guard or reserves.

(2) "Disabled veteran" means an individual, whether or not he is a veteran as defined in this section, who:

(a) served on active duty;

(b) has been separated from service by honorable discharge; and

(c) suffers a service-connected disability determined by the United States veterans administration to be 30% or more disabling.

(3) "Eligible spouse" means:

(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service-connected disability; or

(b) the spouse of:

(i) a disabled veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(4) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment.

(5) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5),

current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring.

(6) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(7) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(8) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a postsecondary vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(9) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(10) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

(ii) has been separated from service by honorable discharge.

(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues.

(11) "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

History: En. Sec. 3, Ch. 1, Sp. L. 1983.

Cross-References

Judiciary, Title 3.

Legislative Branch, Title 5.

"Developmentally disabled" defined similarly to "mental impairment", 53-20-102.

39-30-104 and 39-30-105 reserved.

39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state.

History: En. Sec. 9, Ch. 1, Sp. L. 1983.

Compiler's Comments

Statement of Intent: The statement of intent attached to Senate Bill 2 (Ch. 1, Sp. L. 1983) read: "A statement of intent is provided to address the nature of the employment preference granted in the bill. The legislature intends that public employers seek and hire the most qualified persons for positions in public employment. It is also the intent of the legislature that the nature of the preference is a relative one in that it is to be applied among two or more applicants for a position who have substantially equal qualifications. Substantially equal qualifications does not mean a situation in which two or more applicants are exactly equally qualified. It means a range within which two applicants must be considered to be substantially equal in view of the qualifications set for the job. Qualifications should include job-related knowledge, skill, and abilities. The legislature recognizes that public employers use a variety of scored and unscored selection procedures such as conventional written examinations, training and experience requirements, performance tests, structured oral interviews, or combinations of these. The legislature does not intend to specify the type of selection procedure to be used by a public employer.

A statement of intent is also required for this bill because section 9 [39-30-106] requires the department of administration to adopt rules implementing sections 1 through 10 [this chapter] and to consult with the department of social and rehabilitation services in formulating rules for the certification of handicapped persons.

The legislature intends the rules to adequately provide for the administration of the employment preference law, but to include only those rules that are reasonably necessary to implement sections 1 through 10 [this chapter].

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those persons and organizations that have shown past interest in the employment preference law, is afforded sufficient time and opportunity to participate in the rulemaking procedure. The department should give such notice and hold such hearings as will ensure adequate public participation.

Rules adopted by the department apply to all initial hirings to positions by all public employers. In formulating its rules the department should take this into consideration and adopt rules that can be used and applied by the broad spectrum of state and local public employers subject to sections 1 through 10 [this chapter].

It is the intent of the legislature that the department formulate and adopt rules relating, but not limited, to the following matters and take into account the following considerations.

(1) Claiming preference — documentation and verification. Rules relating to the job application process should include the manner in which a preference should be claimed when a job is applied for. They should prescribe the means by which the applicant must document and submit evidence of such things as the applicant's status as a Montana resident veteran, disabled veteran, handicapped person, or eligible spouse. It is the intent of the legislature that rules for claiming and documenting a preference do not place unreasonable burdens upon applicants.

(2) Handicapped persons — certification. The rules should provide that a person will not be denied handicapped status and certification merely because of his current or former employment, should address the matter of what constitutes a physical or mental impairment that substantially limits one or more major life activities, and outline in what instances a physical or mental impairment limits a person's ability to obtain, retain, or advance in employment. The department may wish to do this by a combination of a statement of general principles and specific examples.

Rules should provide for a certification process that allows, when appropriate, permanent certification of those impairments considered to be permanent in nature. A procedure for extension or loss of certification should be provided for those instances in which a handicap is or may be temporary.

(3) Military conflicts. The legislature intends the rules to apply federal law to determine what constitutes a campaign or expedition for which a campaign badge is authorized by the Congress of the United States or department of defense.

(4) Honorable discharges. The legislature intends the rules to apply federal law in defining honorable discharges.

(5) Hiring decision notices and explanations. The legislature intends the rules to provide for the form and content of written notices of hiring decisions, including whether the position was obtained as the result of application of the preference by the public employer, written requests for explanations of hiring decisions, and written explanations of hiring decisions.

(6) Reopening of selection process. The legislature intends the rules to provide for a method of reopening the selection process for a job should a court order the selection process reopened, and include a method of giving notice to those who applied for the job informing them of the reopening and the reason therefor.

(7) Jobs subject to federal law. The legislature intends the rules to identify or provide a method of identifying work or positions to which the employment preference does not apply by virtue of section 10 [39-30-108].

Cross-References

Administrative rulemaking, Title 2, ch. 4, part 3.

39-30-107. Certification of handicapped persons. The department of social and rehabilitation services shall certify persons as handicapped for the purpose of employment preference as provided in this chapter.

History: En. Sec. 6, Ch. 1, Sp. L. 1983.

39-30-108. No application if conflict with federal law. This chapter does not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

History: En. Sec. 10, Ch. 1, Sp. L. 1983.

Cross-References

Supremacy clause, Art. VI, U.S. Const. (Federal Materials, MCA Annotations, Vol. 1).

Part 2
Operative Provisions

39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a disabled veteran or handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in subsection (5)(b) of 39-30-103 or to any other personnel action that is not an initial hiring.

History: En. Sec. 4, Ch. 1, Sp. L. 1983.

Cross-References

Reemployment of veteran on completion of service, Title 10, ch. 2, part 2.

Preference of Montana labor in public works, 18-2-403.

Management rights of public employers, 39-31-303.

Employment preference no violation of anti-discrimination laws, 49-2-405, 49-3-103.

39-30-202. Eligibility requirements. No veteran, disabled veteran, eligible spouse, or handicapped person is entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying.

History: En. Sec. 5, Ch. 1, Sp. L. 1983.

Cross-References

Rules for determining residence, 1-1-215.

39-30-203. Duration of preference. Subject to 39-30-202:

(1) a handicapped person, the spouse of a handicapped person as described in subsection (3)(b)(iii) of 39-30-103, a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of 39-30-103 qualifies for employment preference as long as the disabling condition exists;

(2) a veteran, as defined in 39-30-103, who is not a disabled veteran, as defined in 39-30-103, qualifies for employment preference for no longer than 15 years following separation from service or for no longer than 5 years following December 20, 1983, whichever is later.

(3) the surviving spouse of a veteran as described in subsection (3)(a) of 39-30-103 qualifies for employment preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of 39-30-103 qualifies for employment preference for as long as the person is missing in action or a prisoner of war.

History: En. Sec. 7, Ch. 1, Sp. L. 1983.

39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

History: En. Sec. 8(1)-(3), Ch. 1, Sp. L. 1983.

39-30-207. Enforcement of preference. (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts which on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to subsection (9) of 39-30-103 and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court has found that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an

explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 8(4), Ch. 1, Sp. L. 1983.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Evidence, Title 26.

TITLE 49

HUMAN RIGHTS

49-2-405. Veterans' and handicapped persons' employment preference. The application of an employment preference as provided for in Title 39, chapter 30, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. Sec. 12, Ch. 1, Sp. L. 1983.

49-3-103. Permitted distinctions. (1) Nothing in this chapter shall prohibit any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in Title 39, chapter 30, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983.

Compiler's Comments

1983 Special Session Enactment: Subsection (2) was enacted as a separate section by Ch. 1, Sp. L. 1983. It is codified as subsection (2) of this section for convenience and logical organization.

1983 Regular Session Amendment: In (1) (now (1)(a)), inserted "marital status".

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